

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Kevin Moen,

Plaintiff,

v.

**ORDER ON REPORT
AND RECOMMENDATION**
Civil No. 11-2906 ADM/TNL

State of Minnesota; Minnesota Department of Human Services; Minnesota Sex Offender Program; Minnesota Attorney General's Office; Minnesota Department of Corrections; Pipestone County Health and Human Services Director-Jane Doe; Tim Walz, Governor, State of Minnesota; Jodi Harpstead; Nancy Johnston; Terry Kneisel; Nancy Stacken; Meg McCauley; Sue Johnson; Janine Hebert; Paul Christensen; Chad Mesojedec; Ann Linkert; Stacey Rhoades; Kayla Taylor; Krista Gilpin; Dr. Barry; Elizabeth Peterson; David Clanaugh; Chris Sell; Nicholas Lammi; Blake Carey; Brian Ninneman; Steve Sajdak; Jordan Goodman; Corey Vargason; Jana Skye Brister-Korby; Marshall Smith, Department of Health Systems Chief Executive Officer, Direct Care and Treatment, Minnesota Department of Human Services; Keith Ellison, Attorney General, State of Minnesota; Paul Schnell, Commissioner, Minnesota Department of Corrections; and an unknown number of John Does and Jane Does, sued in their individual and official capacities,

Defendants.

Kevin Moen, pro se.

This matter is before the undersigned United States District Judge for a ruling on Plaintiff Kevin Moen's ("Moen") Objection [Docket No. 25] to Magistrate Judge Tony N. Leung's

December 2, 2022 Report and Recommendation [Docket No. 24] (“R&R”). In the R&R, Judge Leung recommends dismissing Moen’s Second Amended Complaint [Docket No. 23] without prejudice for failing to comply with the “short and plain statement” requirement of Federal Rule of Civil Procedure 8(a)(2). Judge Leung noted that Moen’s Second Amended Complaint is 92 pages long and includes over 300 paragraphs. R&R at 3. Judge Leung also found that the Second Amended Complaint is not “plain” because it lists dozens of defendants but does not differentiate which of the defendants is alleged to have done what specific actions that Moen claims are unlawful. In advance of filing the Second Amended Complaint, Moen had been warned that failure to comply with Rule 8(a)(2)’s “short and plain” requirement could result in dismissal without prejudice. See Order [Docket No. 21] at 1-3.

Moen has filed an objection to the R&R, arguing that it includes the appearance of judicial bias against him as a pro se litigant. Moen also argues that the R&R demonstrates the complexity of this case and that the Court should appoint counsel to represent him.

In reviewing a magistrate judge’s report and recommendation, the district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C); see also D. Minn. L.R. 72.2(b). A district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

After de novo review, the Court concludes that nothing in the R&R suggests the appearance of judicial bias or the need to appoint counsel in this case. Additionally, the Court agrees with the conclusion in the R&R that the Second Amended Complaint is overly long and that it is “often impossible to tell from the second amended complaint *whom*, specifically, is being alleged by Moen to have done *what*.” R&R at 4. As such, dismissal without prejudice is

warranted. See Olson v. Little, 978 F.2d 1264 (8th Cir. 1992) (unpublished table disposition) (affirming district court’s *sua sponte* dismissal of plaintiff’s complaint without prejudice because the “complaint is wordy and confusing, and does not provide the district court with the ‘short and plain statement’ required by [Rule 8(a)]”) (quoting Fed. R. Civ. P. 8(a)(2)).

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff Kevin Moen’s Objection [Docket No. 25] to Magistrate Judge Tony N. Leung’s December 2, 2022 Report and Recommendation is **OVERRULED**;
2. The Report and Recommendation [Docket No. 24] is **ADOPTED**; and
3. Moen’s Second Amended Complaint [Docket No. 23] is **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: March 8, 2023